IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.519 of 1997

M/s. M.M.T.C. Ltd.,
"Chennai House"
7, Esplanade, Chennai-108,
Rep by its Deputy General Manager,
Mr.V.Suresh. ..Appellant/Complainant

vs.

Mrs.Sampooranam .. Respondents/Accused

Prayer: This criminal appeal has been filed against judgment dated 29.4.1997 in C.C.No.195/1995 on the file of the Judicial Magistrate No.I, Tirupur.

For Appellant : Mr.B.Kumar,
for Mr.Meera Gupta

For Respondent : Mr.Anantha Prasad
Legal Aid Counsel

JUDGMENT

This appeal has been preferred against the judgment in

C.C.No.195/1995 on the file of the Court of Judicial

Magistrate No.I, Tirupur. The complaint in C.C.No.195/1995

is the appellant herein.

2. The averments in the private complaint is under

Section 200 Cr.P.C against the accused for an offence under Section 138 of Negotiable Instrument Act was preferred by P.W.1 on behalf of a private company viz. M.M.T.C. Ltd, Chennai House, No.7, Esplanade, Chennai-108. The complaint was taken on file after taking sworn statement of the complainant as C.C.No.195/1995 by the learned Judicial Magistrate No.1, Tirupur. Copies under Section 207 were furnished to the accused on his appearance of summons. When the offence was explained to the accused, she pleaded not guilty. The brief facts of the complaint are as follows:-

The accused had availed financial assistance from the complainant to an extent of Rs.53, 72,000/- in connection with their proposal for export of knitted garments. After availing the said financial assistance and drawing a sum of Rs.53,72,000/- the accused failed to execute her proposal and became liable to pay back the borrowed amount of Rs.55,69,393/- with interest. In partial discharge of the above said debt amount the accused issued a post cheque bearing No.103657 dated 5.2.1995 for a sum of Rs.32,00,000/- . On presentation the cheque was returned as "funds insufficient". A criminal complaint in C.C.No.113/1995 has been filed before the Court and the same is posted for trial on 9.6.1995. For the remaining amount the accused had issued a cheque bearing No.104157 dated 25.3.1995 drawn on the State Bank of Mysore, Tirupur Branch for a sum of Rs.16,00,000/-. The complainant's Tirupur Branch presented

the said cheque on the same date through their bankers viz., Indian Overseas Bank, Main Branch, Tirupur, which when presented was dishonoured and returned by their bankers (State Bank of Mysore) with remarks "Exceeds Arrangements". The complainant got the intimation of return of dishonoured cheque on 27.3.1995. Thereafter, the complainant issued a legal notice dated 30.3.1995, which was acknowledged by the accused. Again for the balance amount, the accused had made a cheque bearing No.104156 dated 30.3.1995 drawn on the State Bank of Mysore, Tirupur Branch, for a sum of Rs.10 lakhs. The complainant's Tirupur Branch presented the said cheque on 4.4.1995 through their bankers viz, Indian Overseas Bank, Main Branch, Tirupur, which when presented was dishonoured and returned by their bankers State Bank of Mysore on 4.4.1995 with remarks "Exceeds Arrangements". The complainant got the intimation of return of dishonoured cheque on 5.4.1995. The complainant issued a legal notice of demand dated 12.04.1995. The postal receipt is produced by the complainant. The accused has not paid the cheque amount either within 15 days after the receipt of the notices or even till date towards the dischonoured cheques. Hence, the complaint. Towards the debt, the accused had issued demand draft for Rs.50,000/- dated 22.2.1995 and another demand draft dated 7.4.1995 for Rs.3,00,000/- and has also deposited Rs.1,00,000/- in Indian Overseas Bank, Tirupur Branch, on 28.4.1995.

3. On the side of the complainant, the complainant was examined as P.W.1, the Assistant Manager of the Bank was examined as P.W.2 and one V.Suresh was examined as P.W.3. Ex.P.1 to P.18 were marked on the side of the complainant. One Nirmala was examined as D.W.1 and no document was marked on the side of the accused.

4. Thiru.Sridharan, as P.W.1, would depose that he is working as a Branch Manager in the branch office of the complainant's company viz. M.M.T.C. Ltd. at Tirupur and that the accused is running a knittd garments factory in the name of M/s Panax and the accused is the sole proprietrix of the said company. For the purpose of exporting the garments to the complainant's company has advanced a loan of Rs.53,72,000/- to the accused. Ex.P.1 is the xerox copy of the promissory note accepted by the accused in favour of the complainant's company for a sum of Rs.4,35,000/- on 22.1.1995. On 28.2.1995 the accused had executed a promissory note for Rs.8,00,000/- in favour of the complainant's Company. Ex.P.2 is the xerox copy of the promissory note certified by a notary public. Ex.P.3 is xerox copy of the promissory note for a sum of Rs.17,00,00/- executed by the accused in favour of the complainant's company on 27.7.1994. Ex.P.4 is the xerox copy of the promissory note dated 5.4.1994 executed by the accused in favour of the complainant's company for Rs.8,00,000/-.

Ex.P.5 is the xerox copy of the promissory note dated 2.9.1994 for a sum of Rs.7,00,000/- executed by the accused in favour of the complainant's company. Ex.P.6 is the xerox copy of the promissory note executed by the accused in favour of the complainant's company for a sum of Rs.6,50,000/- on 2.9.1994. Ex.P.7 is the xerox copy of the promissory note for Rs.5,00,000/- executed by the accused in favour of the complainant's company on 2.9.1994. Ex.P.8 is the statement of accounts for the period from 1.4.1994 to 30.6.1995 showing the transaction between the accused and the complainant's company. According to P.W.1 the original for the above said exhibits and Ex.P.8 have been produced in C.C.No.113/1995. To discharge the above said loan the accused had given a cross-cheque for Rs.16,00,000/- dated 25.3.1995 in favour of the complainant's company and when the said cheque was presented before the Indian Overseas Bank, it was returned with an endorsement that there was no sufficient funds. The said bounced cheque is Ex.P.9. On 30.3.1995, a notice was sent to the accused informing the return of the said cheque. Ex.P.10 is the copy of the said notice. Ex.P.11 is the acknowledgment. On 30.3.1995 the accused had given a cheque for Rs.10,00,000/- drawn in the name of State Bank of Mysore. When the said cheque was presented in the Indian Overseas Bank for realisation on 4.4.1995, the same was returned by the bank stating that there was not sufficient funds in the account. This fact was

also informed to the accused through a lawyer notice dated 12.4.1995. Ex.P.13 is the copy of the said notice. Ex.P.14 is the postal receipt for having discharged the said notice. No acknowledgment was received from the accused. On 7.4.1995 the accused had sent a demand draft for Rs.5,00,000/-. On 28.4.1995 the accused had paid Rs.1,00,000/- in the complainant's company's account in Indian Overseas Bank, Tirupur Branch. Apart from the above said payments the accused has not paid any amount towards the debt.

5. P.W.2, Thiru.Kumar, Deputy Manager of State Bank of Mysore, Tirupur Branch, has deposed to the fact that since there was not sufficient funds in the account of the Panax Company belong to the accused, the cheque Ex.P.9 drawn by the accused in favour of the complainant's company was returned and Ex.P.15 is the memo of the Bank dated 25.3.1995 in this regard. According to him, Ex.P.12-cheque for Rs.10,00,000/- dated 30.3.1995 presented by the complainant's company was also drawn by the accused Sampooranam. On presentation it was returned by the Bank under Ex.P.16-memo dated 4.4.1995 given by the bank on the ground that there was no sufficient funds in the account of the Panax Company belonging to the accused.

6. P.W.3, Thiru.V.Suresh, Assistant General Manager of the complainant's company, would depose that in the suit

C.C.NO.113/1995 filed by him in connection with the bouncing of the cheque-Ex.P.12 also a notice was sent to the accused informing the said facts. But no acknowledgment was received from the accused. But the register post containing the said notice was returned to the complainant with an endorsement "intimation given not claimed". Ex.P.18 is the returned cover.

7. When incriminating circumstances were put to the accused, she had denied her complicity with the crime. The accused has examined D.W.1-Nirmala, a postmaster in Pichambalayam Branch Office. D.W.1 would depose that she is not aware whether the accused has given any authorization letter to any person to receive the registered tabals addressed in her name.

8. After going through the above oral and documentary evidence, the learned trial Judge has dismissed the complaint. Aggrieved by the findings of the learned trial Judge, the complainant-company has preferred this appeal.

9. Now the point for determination in this appeal is whether the guilt under Section 138 of NI Act has been proved against the accused warranting conviction under Section1 38 of the NI Act thereby setting aside the findings of the learned Judicial Magistrate No.I, Tirupur.?

10.The Point:-

10.(a) The appeal is against acquittal. The learned Judicial Magistrate has assigned the following reasons for acquitting the accused for the offence under Section 138 NI Act:

i) There is no proper authorization in favour of P.W.1 to prefer the private complaint against the accused in favour of M.M.T.C. Ltd. Co.

ii) The promissory notes said to have been executed by the accused in favour of the complainant's company in support of the debt borrowed by the accused were not produced by the complainant but only xerox copies of the alleged promissory notes have been produced.

iii) There is no resolution passed by the board of directors of the complainant's company to show that P.W.1 was given power to represent the company for prosecuting the private complaint on behalf of the Company against the accused.

10(b) The learned senior counsel Mr.P.Kumar appearing for the appellant would contend that a manager of the firm is competent to represent the complainant-company and that P.W.1 as the branch manager of Tirupur Branch of M.M.T.C. Ltd., is competent to represent the company on behalf of the company. In support of his contention the learned senior counsel has relied on 1997 (ii) CTC 478

(Sagayaduri and other Vs. J.D.Electronics and other). The question arose before the Court in that case was whether the Manager of a partnership firm could file a complaint in the absence of the Power of Attorney or any authorization? It was contended on behalf of the petitioner that since the Manager represents the partnership firm, he cannot be permitted to appear on behalf of the partnership firm in the absence of the authorisation. While deciding the said point the learned Judge has observed as follows:-

" I am afraid this argument cannot hold good in view of the following Explanation (a) to Section141 of the Negotiable Instrument Act which defines the company for the purpose of this Act and the said explanation runs as under:-
"Explanation - For the purpose of this Section (a) "Company" means any body corporate and includes a firm or other association of individuals."
From the above provision, it is clear that the court is empowered to take cognizance if the complaint is preferred by the firm, a company under Section 138 of the Negotiable Instruments Act through the Manager of the company.
The definition of the company under the Negotiable Instruments Act indicates any body corporate including a firm indicates that the company as such has to be represented by some human agency in preferring a complaint before the court. The company, though it is a legal entity, does not have soul, mind body and limbs to walk to the Court for preference of a complaint. The dictates of common sense, practical wisdom, prudence and experience impels the Court in such a situation to allow the company to present a complaint before the Court represented by some person connected with the affairs of the company. The person connected with the affairs of the firm, the company, in the normal run of things may be either its Manager, partner, managing partner or director or any other person authorised by the company. In this case there is no dispute that the complainant is a Manager

representing their company which is a firm. Further more it is quite clear that the complainant being a Manager, on behalf of the firm has signed in some of the documents such as agreements in which the accused in one of the parties and these documents have been filed along with the complaint before the Court. All these things would go to show that the Manager/Complainant is very well connected with the affairs of the partnership firm on whose behalf the complaint has been made."

According the P.W.1, in the case on hand, he is only a Branch Manager at Tirupur Branch of M.M.T.C. Ltd,. Ex.P.17 is the authorization letter produced by P.W.1. A perusal of Ex.P.17 show that authorisation letterEx.P.17 was given by Chief General Manager of M.M.T.C. Ltd,. As per the above said dictum if the Chief General Manager himself files the complaint on behalf of the company then it can be said that the Chief General Manager is competent to file the complaint. But in this case P.W.1 is only a Branch Manager. There is no evidence on record to show that P.W.1 has signed in any of the documents or agreements in which the accused is one of the parties. Under such circumstances, P.W.1, a Branch Manager, is not competent in my view to represent the Company. Further the authorization letter under Ex.P.17 has been given only by the Chief General Manager of M.M.T.C. Ltd. In the cross-examination P.W.1 has admitted that the complainant-M.M.T.C.Ltd. is a private company and there is Chairmant, Managing Director and eight Directors are in the company. He has further admitted that there was no resolution passed in the Company authorizing him to file the

private complaint against the accused. So, the facts of the above said case will not be applicable to the present facts of the case.

10(c) The learned senior counsel for the appellant relying on AIR 2002 SC 182 (M/s. M.M.T.C. Ltd. and another vs. M/s. Medchi Chemicals and Pharma (p) Ltd. and another), contended that in a similar circumstances, in respect of the same complainant viz. M/s M.M.T.C. Ltd, it has been held that the complaint filed by the Manager or Deputy General Manager who had not been authorised to sign and file complaint on behalf of company is valid. But a reading of the said dictum of the Honourable Apex Court will clearly go to show that the said findigns was given in a proceedings to quash the private complaint preferred by the said M/s. M.M.T.C. Ltd. as a complainant. The exact observation at para 12 of the above said judgment runs as follows:-

"In the case of Associated Cement Co. Ltd. vs. Keshvanand reported in 1998(1) SCC 687, it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the Court. It has been held that if a complaint is made in the name of a incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the Court. It is held that the Court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant

to represent the former in Court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasion when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the Court for sending any other person to represent the company in the Court. Thus, even presuming, that initially there was no authority, still the Company can, at any stage, rectify that defect. At a subsequent stage the Company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground."

So it is clear from the above said dictum that the judicial act of a Magistrate in quashing a private complaint on the ground that a de jure complainant viz. a company while requesting the Court to send another defacto-complainant to conduct the case on behalf of the de jure complainant, the Company at a later stage, the Court cannot insist that the defacto-complainant who represented the de jure complainant, the complainant at the first instance alone should represent the de jure complainant through out the case. It has been held by the Honourable Apex Court that even though it is a defect, that defect is curable. On that ground alone the Magistrate is not competent to pass an order for quashing the complaint. Above said facts of the case will not be applicable to the present facts of the case. The Magistrate has not quashed the complaint on any of those grounds mentioned in the above said dictum. The Judicial Magistrate has admitted the complaint, taken the case on file,

conducted a full fledged trial and then has come to a conclusion that an offence under Section 138 of NI Act has not been proved against the accused. One of the reasons for the dismissal of the complaint by the learned Judicial Magistrate is that there was no proper authorization in favour of P.W.1 to represent the case of de jure complainant viz. M/s M.M.T.C. Ltd. P.W.1 is not a defacto-complainant since he was not authorized by a proper person viz. the Directors by way of resolution authorising him to represent the company.

10(d) For the same proposition of law, the learned senior counsel has relied on 2002 (2) Crimes 447 (Y.Venkata Reddy Vs. M/s Jagandamba Enterprises & Anr.). The only point that had arisen for consideration in the above said dictum was that there was no proper authorization given to the Manager to represent the de jure complainant viz. the Company. The short facts of the said case are as follows:-

"The accused was charged under Section 138 of NI Act. According to the complainant, the accused took milk products from the complainant on credit basis on different occasions and in discharge of the legally enforceable debt the accused issued different cheques to the complainant on different dates and that when those cheques having been presented for encashment with the banker were dishonoured and even after the receipt of the legal notices, the accused has failed to pay the mount covered under those cheques which were dishonoured by the bank. The accused has filed petition under Section 204 of Cr.P.C. seeking to discharge him on the ground that the complaints, having been filed by the

company through its Manager, who has not been properly authorized to represent the said company, which is a proprietary concern. Another objection taken before the trial Court is that M/s.Suruchi Milk Products Private Limited was having alleged transactions with the complainant and without impleading the said company he was impleaded in his individual capacity as an accused. Both the contentions were nagatived by the trial Court which necessitated the accused to prefer the above said revision.

While deciding the first issue that is whether the complaint has been preferred by a proper person, the Court has observed as follows:-

"The Code has not envisaged any procedure as to who shall present the complaint when the complainant is a body corporate, regardless of the fact that it is a proprietary concern or a body consisting of individuals like a company, firm, or other association of individuals. The body corporate is a juristic person and, therefore, it is the de jure complainant undoubtedly. Since it is a juristic person, there shall be a corporeal person to present the complaint before a court of Law, who will be the defacto complainant. The learned counsel appearing for the revision petitioners at this juncture seeks to distinguish a proprietary concern qua a Company or a firm or other group of individuals. The learned counsel contends that in the case of proprietary concern except the name of the concern, it is noting but an individual, who is the proprietor thereof, who will be carrying on the business and, therefore, he shall be the proper person to file the complaint I am afraid, I cannot accede to the said contention of the learned counsel. . . . . .

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. . . . . Obviously, M/s Jagadamaba Enterprises is a body corporate and, therefore, it is a juristic person. It shall be represented by a corporeal person. So when M/s.Jagadamba Enterprises is the de jure complinant, there shall be a defacto complinant to represent the same before a Court of law. That de facto complainant may be either the proprietor thereof or any

other person who had been authorized
specifically in regard thereto."
There cannot be two opinion as to the de jure complainant can be represented by a proper authorized defacto-complainant. In the case on hand it is the definite case of the accused that P.W.1, a branch Manager at Tirupur, is not a proper defacto-complainant to represent M/s M.M.T.C. Ltd., the de jure complainant. As per Section 291 of the Companies Act, only the Board of Directors of a Company would be entitled to exercise all such power and to do such act and things as the company is authorized to exercise and do. Admittedly in this case, there are one Chairman-cum-Managing Director and eight Directors to M/s M.M.T.C. Ltd., the de jure complainant herein. So as per section 291 of the Companies Act, only the Board of Directors are entitled to exercise all powers and to do all such act and things as the compnay is authorized to exercise and do. So absolutely there is no iota of evidence let in by P.W.1 to show that he has been authorized by the Board of Directors of the de jure complainant viz. M/s. M.M.T.C. Ltd. to represent the company and to file a complaint on behalf of the Compnay as a defacto-complanant. Further there is no evidence to show that the Chief General Manager who has authorized P.W.1 under Ex.P.17 to prefer this complaint is competent to issue Ex.P.17-authorisation letter in the absence of any delegation of power by the Board of Directors by the de jure complainant viz. M/s M.M.T.C. Ltd.. So the

above said dictum is also not relevant for the purpose of deciding this case. So in my considered opinion it cannot be said that under Ex.P.17, P.W.1 is a competent defacto-complainant to prefer complaint on behalf of the de jure complainant viz. M/s M.M.T.C. Ltd.

10(e) In this case Ex.P.1 to P.7, xerox copies of the promissory notes have been filed on behalf of the complainant to show that the accused had borrowed Rs.53,72,000/- from the de jure complainant. Ex.P.8 is also a xerox copy of the ledger register maintained in the complainant's company. All the above said Ex.P.1 to P.8 were marked subject to objection. It is further seen from the evidence of P.W.1 that originals of the above said documents Ex.P.1 to P.8 were marked in C.C.No.133/1995 on the file of the Judicial Magistrate, if it is so then what prevented the complainant from filing necessary application to send for the original documents for Ex.P.1 to P.8 which are available in C.C.No.113/1995 pending on the file of the same Magistrate. But the relevant point to be decided is whether Ex.P.9 and P.12, cheques, were issued by the accused and whether they have been returned by the Bank on the ground of insufficient funds to attract an offence under Section 138 of NI Act. As per Section (b) to Section 138 of NI Act the payee or the holder in due course of the cheque, as the case may be, makes a demand for payment of

the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. So as per the above said provision of law within 30 days from the date of information that the cheque has been bounced, a notice is to be sent to the drawer of the cheque. There are two cheques Ex.P.9 & P.12 produced by P.W.1. The notices said to have been sent to the drawer after the dishonour of the above said cheques by the complainant are under Ex.P.10 & P.13. Ex.P.11 is the acknowledgment to show that the said notice have been received by the accused. But there is no acknowledgment produced by P.W.1 to show that Ex.P.13 notice was also served on the accused. As per Section 138(c) of NI Act 15 days time is to be given from the date of receipt of notice to the drawer to pay the amount mentioned in the cheque to the payee. So P.W.1 must prove that Ex.P.13-notice issued in respect of the dishonour of Ex.P.12-cheque was received by the accused. Learned trial Judge has also dealt with these points and observed that even though P.W.1 has admitted that there is no acknowledgment received for the service of Ex.P.13-notice, he has not mentioned the same in the private complaint. Ex.P.14 is the returned cover containing original of Ex.P.13-notice. The relevant endorsement in Ex.P.14 is "intimation served not claimed". There is also another endorsement dated 18.2.1995 to the

effect that "Raja Nagar relates to Pichampuharam, hence returned to sender". Whether Ex.P.14 was returned on the ground that Raja Nagar relates to some other area or it was returned on the ground that the adressee not claimed the cover. To prove that Ex.P.14-notice was returned only on the ground of 'Refusal' is not proved by examining the concerned postman by the complainant. On the other hand, D.W.1-postmaster would depose to the fact that she is not aware whether the accused Sampooranam was given any letter of authorization to receive the registered tablas. In Ex.P.11-acknowledgment for the receipt of the other notice under Ex.P.9, the accused has not signed in the said acknowledgment. There is absolutely no evidence on record to show that signature in Ex.P.11-acknowledgment is that of the accused. So in this case it cannot be said that valid notice under Section 138(c) of NI Act has been severed on the accused.

10(f) The learned senior counsel appearing for the appellant relied on 2001 SCC (Cri) 960 (Hiten P.Dalal Vs. Bratindranath Banerjee) to show that under Section 118 of the NI Act the presumption is that only after the receipt of consideration only Ex.P.9 & P.12, cheques, were drawn by the accused. As I have already observed that to attract an offence under Section 138 of NI Act, it is enough if the cheque drawn by the accused was bounced on presentation to

the Bank, is sufficient to attract an offence under Section 138 of NI Act. But in this case there are two important deformities, one is there is no valid authorization on behalf of P.W.1 to represent the de jure complainant viz., M/s M.M.T.C. Ltd., and another is that the provision under Section 138(b) & (c) were not followed. Hence, I am of the considered opinion that there is no reason to interfere with the well considered judgment in C.C.No.195/1995 on the file of the Judicial Magistrate, which does not suffer from any illegality or infirmity to warrant interference from this Court. Point is answered accordingly.

11. In the result, the appeal is dismissed confirming the judgment in C.C.No.195/1995 on the file of the Judicial Magistrate No.I, Tirupur.

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To,

The Judicial Magistrate No.I,
Tirupure.